



Bolivia: Decree Nationalizing Tin Mines

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transfer of power amounted to delegation of legislative power *sensu stricto*, which they considered unacceptable in principle.³⁸

Out of these divergent views, a rather complicated picture emerged. The clause referring to restrictions and modifications was saved by a majority of five judges (the three judges and the two partly dissenting judges) against two, whereas the opinion of the two entirely dissenting judges plus the opinion of the two partly dissenting judges in respect of the clause concerning repeal and amendment prevailed over the group of three judges. Thus in the words of Lord Hewart,³⁹ the Supreme Court of India has located the highwater mark for certain types of delegation of legislative power in India and has indicated what kind of clauses extending delegation would be *ultra vires* or *intra vires*. It has also tended to explain delegated legislation by the concept of conditional, ancillary, or subordinate legislation. The decision of the Supreme Court has since been followed by a number of High Courts which have declared delegation of legislative power in principle valid, but subject to definite limitations. They also have followed the Supreme Court in rejecting clauses of repeal and amendment as unconstitutional, while accepting clauses concerning restrictions and modifications.⁴⁰

In settling a constitutional issue of primary importance, the Supreme Court had, apart from general principles, little guidance from the Constitution. Its advisory opinion constitutes an impressive survey of the history of delegation in Great Britain and other Commonwealth countries, and in the United States. To constitutional lawyers in the West, this opinion may reveal the possibility of simultaneous application of English and American patterns in countries with new constitutions. It shows that by now the previously distant lines of development of the parliamentary and presidential regimes began at least in certain respects to run parallel, and that Indian lawyers were able to rely on the experience of both systems without excessive difficulties in reconciling some of the differences which tend to fade on the common background of democracy.

C. H. ALEXANDROWICZ-ALEXANDER*

³⁸ 1951 SCJ 558, 640.

³⁹ *King v. Min. of Health*, [1927] 2 KB 229, 236.

⁴⁰ 1952 ILR Patna. 220, 359; 1952 ILR All. 866; 1952 II. M.L.J. 598; 1952 ILR., S.C. 123.

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NEW LEGISLATION

BOLIVIA: DECREE NATIONALIZING TIN MINES—The Decree nationalizing the tin mines theretofore operated by the Patiño, Aramayo, and Hochschild interests was promulgated in Bolivia on October 31, 1952. Although no general

nationalization was effected, minor concessions being respected, these three groups in fact controlled nearly the whole Bolivian tin production.

The preamble to the Decree recites in detail the reasons for the measure. In essence, they are the economic monopoly of the principal source of wealth of the country, with a series of political and social repercussions. Any one slightly acquainted with the recent history of Bolivia knows that the exploitation of these tin mines has been the principal motor of the revolutions and counterrevolutions in Bolivia since 1936.

The Decree is careful to distinguish between the mineral deposits and the installations for the extraction thereof. The former constitutionally belong to the State (1945 Constitution, art. 108) and the present Government is only restoring to the Nation concessions heretofore granted. The expropriation as such, therefore, extends only to the installations which are recognized as the property of the companies affected. These companies are Patiño Mines & Ent. Cons., Bolivian Tin & Tungsten Mines Corp., Cia. Minera Agricola Oploca de Bolivia, Cia. Minera Unificada del Cerro de Potosí, Cia. Minera de Oruro, Cia. Huanchaca de Bolivia, Empresa Minera Matilde, Empresa Minera Bolsa Negra, Minas Pampa Grande, Grupo Minero Venus, Compagnie Aramayo de Mines en Bolivia, Mauricio Hochschild S.A.M.I. Despite the English or French names of some of these companies, incorporated abroad, nearly all their capital belongs to the three families, Patiño, Aramayo, and Hochschild.

Article 1 of the Decree enacts the nationalization of all these mines and installations, in the interest of the national welfare. Article 2 provides (a) reversion to the property of the State of the mining concessions, (b) expropriation for the benefit of the State of all the machinery, installations, buildings, which may be necessary for the discovery, operation, exploration, working, transport and distribution of the mineral products.

For the valuation of the expropriated properties, there shall be included also investments abroad, reserves for social security obligations, and other property taken over by the State. Article 3 makes a provisional valuation of all the individual properties, the total being approximately 25 million dollars plus £87,657 sterling. The definitive valuation is to be made by the new *Corporación Minera de Bolivia*, vested with the duty of taking possession and operating the nationalized mines; in determining the valuation, it shall take into account the amount due to the State from the expropriated companies (fundamentally for alleged arrears of taxes and compensation for foreign exchange).

Also as a provisional measure, there shall be delivered to the companies orders for payment, maturing December 1, 1953; such orders are completely non-negotiable, and the Bolivian State shall recognize no transfer or attachment thereof. Upon the termination of negotiations with the former owners, these provisional orders for payment are to be exchanged for definitive orders of payment, all to bear interest at 3% dating from the entry into possession

of the mines. To meet its obligations thereunder, the Government of Bolivia shall deposit in the Central Bank 2% of the gross value of the minerals exported. Although the Bolivian Constitution (1945) provides that "expropriation is imposed for reason of public utility or when (property) does not fulfill a social function, judged conformably to law and after fair indemnification" (art. 17), this last requisite has been ignored probably because of the origin and revolutionary character of the present Bolivian régime.

The Decree includes other detailed provisions. One of them provides for the intervention, by means of delegates, of the laborers of the nationalized mines in their local administration.

JESUS DE GALINDEZ

VENEZUELA: NEW CONSTITUTION—Still another constitution was approved in Venezuela on April 15, 1953, raising the number of constitutions that have governed the country during a century and a half of independence to 23. The chief characteristic of the new constitution arises from the situation which gave birth to it: a military coup in November, 1948, overturned the constitutional government of President Rómulo Gallegos, who had been elected pursuant to the progressive constitution of 1947; for four years the country was governed by a junta composed of three colonels at first and later of two colonels and a civilian; at the end of 1952, this junta convoked elections for a constitutional convention; the first announcement of the results of the election proclaimed the surprising triumph of the opposition; the government forthwith established an iron censorship and two days later, the election of the government candidates was announced, together with the decision of Colonel Pérez Jiménez to assume the presidency of the country provisionally in accord with the armed forces. These facts coupled with the political realities in Venezuela augur but a brief life for the new constitution.

In appearance, the 1953 constitution differs little from its predecessors. This frequently happens in these Hispano-American constitutional changes; the change is generally a matter of mere shading in the direction of facilitating governmental repression or granting more liberty to the public. In the present instance, the difference is to be noted primordially in the preamble to the constitution and in the enumeration of the bill of rights; while nearly all the individual rights recognized in the progressive constitution of 1947 are in essence mentioned (art. 35), the authoritarian reaction of 1953 is notable in the suppression of paragraphs and phrases in the former preamble which exalted individual liberty, distribution of wealth, and democratic institutions; at the same time individual rights are foreshortened in the subsequent detailed enumeration and their efficacy diminished by the constant vague reference to statutes which shall regulate their exercise. Many social security rights mentioned in the Constitution of 1947 are eliminated. The suspension of such rights by the Government is also facilitated (art. 36).

Only in theory does Venezuela continue to be a federal republic; the states